

FILED IN THE  
U.S. DISTRICT COURT  
EASTERN DISTRICT OF WASHINGTON

**May 04, 2020**

SEAN F. McAVOY, CLERK

UNITED STATES DISTRICT COURT  
EASTERN DISTRICT OF WASHINGTON

STATE OF WASHINGTON,

Plaintiff,

v.

CITY OF SUNNYSIDE; AL  
ESCALERA, in his official and  
individual capacities; MELISSA  
RIVAS, in her official and individual  
capacities; CHRISTOPHER  
SPARKS, in his official and  
individual capacities; JOEY  
GLOSSEN, in his official and  
individual capacities; JAMES  
RIVARD, in his official and  
individual capacities;

Defendants.

NO: 1:19-CV-3174-RMP

ORDER DENYING DEFENDANTS'  
MOTION TO AMEND JUDGMENT

BEFORE THE COURT is a Motion for Relief from Judgment by Defendants  
City of Sunnyside, et al. ECF No. 19. Having considered Defendants' motion, ECF  
No. 19; Plaintiff's response and declaration, ECF Nos. 20 and 21; Defendants' reply,

1 ECF No. 23, and the remaining record, the Court denies Defendants’ motion and  
2 leaves the judgment in this matter intact.

3 The Court granted Defendants’ motion to dismiss Plaintiff’s Amended  
4 Complaint for lack of subject matter jurisdiction on the basis that Plaintiff had not  
5 shown that it had *parens patriae* standing without prejudice. ECF No. 16 at 12  
6 (citing *Mox. Ex. rel. Koster v. Harris*, 847 F.3d 646, 656 (9th Cir. 2017), which held  
7 that dismissal for lack of subject matter jurisdiction generally is without prejudice).  
8 The Court set a deadline for Plaintiff to file a Second Amended Complaint and  
9 cautioned: “Failure to overcome the deficiencies identified with respect to standing  
10 will result in dismissal with prejudice.” *Id.* at 13.

11 Before the amendment deadline, Plaintiff gave notice that it would not be  
12 filing a Second Amended Complaint. ECF No. 18. The Court closed the file in the  
13 case, and, shortly thereafter, Defendants moved to amend the judgment to dismiss  
14 Plaintiff’s Amended Complaint with prejudice. ECF No. 19

15 However, the Court finds that amendment of the judgment is not warranted.  
16 The Court’s order of dismissal gave Plaintiff an opportunity to amend its complaint  
17 to correct the jurisdictional deficiency. ECF No. 16 at 12–13. The Court’s  
18 dismissal order did not contemplate dismissal with prejudice as a sanction against  
19 Plaintiff. Had Plaintiff elected to file a Second Amended Complaint, and again  
20 failed to establish jurisdiction, then the Court would have dismissed the matter with  
21 prejudice. Instead, Plaintiff filed a new cause of action in state court, which

1 Defendant removed to this Court under a new case number. *See* Case No. 20-cv-  
2 3018-RMP (E.D.Wash.).

3 The Rule 12(b)(1) dismissal allowed Plaintiff to amend its complaint to  
4 adequately allege standing. The Judgment dismissing the matter without prejudice  
5 was not left intact as a matter of oversight or omission under Fed. R. Civ. P. 60(a),  
6 as Defendants suggest. Rather, Plaintiff did not file a Second Amended Complaint  
7 for Defendants to challenge and for the Court to review. Accordingly, Defendants'  
8 motion seeking to amend the judgment is denied. **IT IS HEREBY ORDERED:**

9 1. Defendants' Motion for Relief from Judgment, **ECF No. 19**, is  
10 **DENIED.**

11 2. The Judgment, ECF No. 17, shall not be amended.

12 **IT IS SO ORDERED.** The District Court Clerk is directed to enter this  
13 Order and provide copies to counsel.

14 **DATED** May 4, 2020.

15  
16 *s/ Rosanna Malouf Peterson*  
17 ROSANNA MALOUF PETERSON  
18 United States District Judge  
19  
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